

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL ANTHONY ABELS,

Petitioner,

v.

SCOTT FRAKES,

Respondent.

Case No. C11-174-RSM-JPD

REPORT AND RECOMMENDATION

Petitioner Michael Anthony Abels is a state prisoner who is currently confined at the Monroe Corrections Complex in Monroe, Washington where he is under the jurisdiction of the Indeterminate Sentence Review Board ("ISRB"). Petitioner has submitted to this Court for consideration a document entitled "Motion for Permission to Leave to File a Writ of Habeas Corpus Pursuant to 2254" and an application for leave to proceed with this action *in forma pauperis*. (See Dkt. Nos. 1 and 7.) Petitioner, in his motion, requests leave of this Court to file a federal habeas petition challenging his 1982 King County Superior Court conviction on a charge of first degree murder. (*Id.*)

A review of this Court's records reveals that petitioner has filed at least seven prior habeas petitions relating to his 1982 conviction. See *Abels v. State of Washington*, C90-1655-JCC; *Abels v. ISRB, et al.*, C04-2259-JLR; *Abels v. Van Boening*, C08-764-JCC; *Abels v. Van*

1 *Boening*, C08-1118-RAJ; *Abels v. Sinclair*, C09-539-RSL; *Abels v. Sinclair*, C09-656-TSZ;
 2 *Abels v. Glebe*, C09-1720-RSM. The first of those petitions was considered on the merits and
 3 denied. *See Abels v. State of Washington*, C90-1655-JCC, Dkt. Nos. 42 and 44. At least three
 4 of petitioner's subsequent petitions were deemed second or successive and were transferred to
 5 the Ninth Circuit pursuant to Circuit Rule 22-3¹. *See Abels v. Van Boening*, C08-764-JCC;
 6 *Abels v. Sinclair*, C09-539-RSL; and, *Abels v. Sinclair*, C09-656-TSZ.

7 Petitioner is now asking this Court to grant him permission to file yet another federal
 8 habeas petition challenging the same conviction. However, as petitioner has previously been
 9 advised, only the court of appeals may authorize the filing of a second or successive petition.
 10 *See id.* Accordingly, petitioner's motion for leave to file a § 2254 petition is not properly
 11 before this Court. This Court therefore recommends that petitioner's motion for leave to a §
 12 2254 petition, and his application to proceed *in forma pauperis*, be stricken. This Court further
 13 recommends that the instant action be dismissed without prejudice to petitioner presenting his
 14 motion to the proper court for consideration. A proposed Order accompanies this Report and
 15 Recommendation.

16 DATED this 10th day of March, 2011.

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 18 JAMES P. DONOHUE
 19 United States Magistrate Judge

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 21 ¹ Circuit Rule 22-3(a) provides as follows:

22 Any petitioner seeking authorization to file a second or successive 2254 petition or
 23 2255 motion in the district court must file an application in the Court of Appeals demonstrating
 24 entitlement to such leave under 28 U.S.C. § 2254 or § 2255. *See* Form 12. An original of the
 25 application must be filed with the Clerk of the Court of Appeals. No filing fee is required. If a
 26 second or successive petition or motion, or an application for authorization to file such a
 petition or motion, is mistakenly submitted to the district court, the district court shall refer it to
 the court of appeals. (*Rev. 12/1/09*)